

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON DOYLE,

Plaintiff,

v.

WILLIAM GONZALES; DAN W.
DOPPS; SCOTT D. JONES; and
the CITY OF QUINCY,
WASHINGTON,

Defendants.

NO. CV-10-0030-EFS

**ORDER HOLDING MOTIONS IN
ABEYANCE, SETTING RESPONSE AND
REPLY BRIEFING DEADLINES, AND
CAUTIONING MR. DOYLE AND
COUNSEL**

AARON DOYLE,

Plaintiff,

v.

CITY OF QUINCY, a Washington
municipal corporation; QUINCY
POLICE OFFICERS' ASSOCIATION;
RICHARD ACKERMAN in his
official capacity as QUINCY
POLICE CHIEF, and LESLIE
ACKERMAN, as a marital
community; TIM SNEAD in his
official capacity as QUINCY
CITY ADMINISTRATOR; GENE
FRETHEIM, in his official
capacity as QUINCY POLICE
CAPTAIN, and NANCY FRETHEIM,
as a marital community; ALLAN
GALBRAITH in his official
capacity as the QUINCY CITY
ATTORNEY and JANE DOE
GALBRAITH as a marital
community,

Defendants.

NO. CV-11-0307-EFS

1 A hearing occurred in the above-captioned matters on August 7, 2012.
2 Plaintiff Aaron Doyle participated, as did Plaintiff's counsel of record
3 Garth Dano, William Gilbert, Paul Lindemunth, and Christina Sherman.
4 Philip Talmadge appeared on behalf of Dano ♦ Gilbert, P.S. Jerry Moberg
5 appeared on behalf of Defendants William Gonzales, Dan W. Dopps, Scott
6 D. Jones, and the City of Quincy in CV-10-30-EFS. In CV-11-307-EFS,
7 Defendant Quincy Police Officers Association (QPOA) was represented by
8 Patrick McMahon, while the remaining Quincy Defendants were represented
9 by Robert Christie.

10 At the hearing, Mr. Doyle advised that he contests 1) whether his
11 counsel had the authority to present the settlement agreement, which he
12 had signed, to defense counsel for consideration, and 2) whether the
13 terms of the settlement agreement, if enforceable, have been satisfied
14 by Defendants. Accordingly, it is Mr. Doyle's position that these two
15 lawsuits have not been settled and should not be dismissed based on the
16 filed stipulated dismissals.

17 After hearing from counsel and Mr. Doyle, the Court was concerned
18 that the parties and counsel have not had an adequate opportunity to
19 consider and present to the Court their respective positions regarding
20 the contested attorney-client relationships, and the validity and
21 enforceability of the settlement agreement, including whether this Court,
22 rather than the identified arbitrators should consider the contested
23 issues regarding the settlement agreement. Accordingly, the Court grants
24 Mr. Doyle fourteen days to file a response to the pending motions: 1)
25 Plaintiff's counsel's motions to withdraw and stay, CV-10-30-EFS, ECF No.
26

1 [619](#),¹ and CV-11-307-EFS, ECF Nos. [29](#) & [31](#); 2) Dano ♦ Gilbert's Motion to
2 Supplement the Record Regarding Motion for Withdrawal and Stay, CV-10-30-
3 EFS, ECF No. [629](#), and CV-11-307-EFS, ECF No. [50](#); 3) QPOA's motion to
4 dismiss QPOA, CV-11-307-EFS, ECF No. [36](#); and 4) the Stipulated Motion for
5 an Order of Dismissal of All Parties Except QPOA, CV-11-307-EFS, ECF No.
6 [44](#). Replies shall be filed no later than August 29, 2012. After
7 reviewing the filings, the Court will determine whether a hearing must
8 be set to resolve the pending motions.

9 Assertions of fact in a memorandum must be supported by evidence,
10 such as through an exhibit, affidavit, or declaration. Absent supporting
11 evidence, an assertion of fact in a memorandum is merely argument.

12 The Court repeats its oral caution at the hearing that any
13 discussion of the inadequacy of Plaintiff's counsel's representation may
14 result in the waiver of the attorney-client privilege. See Wash. RPC
15 1.6(b)(5) (allowing a lawyer to reveal attorney-client privileged
16 information to "establish a claim or defense on behalf of the lawyer in
17 a controversy between the lawyer and the client"). In addition, counsel
18 are to be aware of RPC 3.7's limitation regarding whether a lawyer may
19 act as a witness.

22
23 ¹ The motion to withdraw and stay in CV-10-30-EFS, ECF No. [619](#), was
24 previously denied as moot because the Court granted the Stipulated Motion
25 for Order of Dismissal. ECF No. [628](#). Given the contested status of this
26 lawsuit, the Court directs the Clerk's Office to revive this termed
motion.

1 Lastly, given the contested status of these lawsuits, Plaintiff's
2 counsel are to ensure that the funds distributed pursuant to the
3 settlement agreement remain in a trust account.

4 Accordingly, for the reasons given at the hearing and supplemented
5 above, **IT IS HEREBY ORDERED:**

6 1. The Clerk's Office is directed to **REVIVE** Plaintiff's counsel's
7 Motion for Withdrawal and Stay, **ECF No. [619](#)**, in CV-10-30-EFS as a pending
8 motion.

9 2. No later than **August 22, 2012**, Mr. Doyle shall file his
10 responses to the pending motions: 1) Plaintiff's counsel's motions to
11 withdraw and stay, CV-10-30-EFS, ECF No. [619](#), and CV-11-307-EFS, ECF Nos.
12 [29](#) & [31](#); 2) Dano ♦ Gilbert's Motion to Supplement the Record Regarding
13 Motion for Withdrawal and Stay, CV-10-30-EFS, ECF No. [629](#), and CV-11-307-
14 EFS, ECF No. [50](#); 3) QPOA's motion to dismiss QPOA, CV-11-307-EFS, ECF No.
15 [36](#); and 4) the Stipulated Motion for an Order of Dismissal of All Parties
16 Except QPOA, CV-11-307-EFS, ECF No. [44](#).

17 3. Replies shall be filed no later than **August 29, 2012**.

18 4. The motions identified in paragraph 2 above are **HELD IN**
19 **ABEYANCE** pending the Court's review of the filings that are to be made.

20 **IT IS SO ORDERED.** The District Court Executive is directed to enter
21 this Order and to provide copies to Mr. Doyle and counsel.

22 **DATED** this 8th day of August 2012.

23
24 s/Edward F. Shea

EDWARD F. SHEA

Senior United States District Judge

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26 Q:\EFS\Civil\2011\0307.status.lcl.wpd